



HARMONIZED SYSTEM
REVIEW SUB-COMMITTEE

-
22nd Session
-

NR0120E1
(+ Annex)
O. Fr.

Brussels, 12 July 2000.

AMENDMENT OF THE TEXT OF SUBHEADING 9021.10,
IN ORDER TO ALIGN THE FRENCH AND ENGLISH VERSIONS

(Item III.B.10 on Agenda)

Reference documents :

34.418 (HSC/1)
34.830 (para. 94 - Council Report)
NC0230E1 (HSC/25)
NC0250E2, Annex IJ/18 (HSC/25 – Report).

I. BACKGROUND

1. At its 25th Session, the Harmonized System Committee examined the classification in the Harmonized System of lumbar support belts and decided on classification in sub-heading 6212.90. During its examination the Committee noted an apparent lack of alignment between the French and English versions of present subheading 9021.1.
2. The alignment question was therefore referred to the Review Sub-Committee and the Secretariat was instructed to examine the possibility, in particular as regards the legal aspects, of also making such an amendment by corrigendum. (Annex IJ/18 to Doc. NC0250E2, paragraphs 6 and 16 – HSC/25, Report).

II. SECRETARIAT COMMENTS

3. The Secretariat would first draw the Review Sub-Committee's attention to the fact that heading 90.21 will be amended from 1 January 2002, following the amendments adopted in the Recommendation of 25 June 1999. However, the question of non-alignment raised by the Committee will remain, the text at issue becoming subheading 9021.10 in the 2002 version.

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Alignment of the two versions of subheading 9021.10 (2002 version)

4. During the study of the classification of lumbar support belts, a difference of interpretation concerning the scope of subheading 9021.1 (9021.10 in the 2002 version) arose among Contracting Parties using the French version of the HS.
5. Certain delegates indicated that, based on a strict interpretation of the French version of the legal texts, subheading 9021.1 covers only orthopaedic or fracture appliances, excluding articles which are not appliances. Other delegates felt that on the basis of a joint reading of the English and French versions of subheading 9021.1, all articles and appliances of this type were classifiable in subheading 9021.1; they also indicated that the Explanatory Note grouped all articles and appliances under the same item, which would confirm their interpretation of the texts.
6. The problem arises since the French version of the text of subheading 9021.1 which reads "Appareils d'orthopédie ou pour fractures" would appear more restrictive than that of the 4-digit heading i.e., Articles et appareils d'orthopédie ...; ...et autres articles et appareils pour fractures"; whereas the English version uses the term "appliances" both in heading 90.21 and in subheading 9021.1.
7. The Secretariat shares the view expressed at the 25th Session of the Harmonized System Committee that differences in interpretation of the scope of subheading 9021.1 (subheading 9021.10 in the 2002 version of the HS) might arise depending on whether the English or French version is used.
8. To overcome this difficulty, the Secretariat proposes aligning the French version of the subheading on the text of the 4-digit heading, as follows :

"9021.10 – Articles et appareils d'orthopédie ou pour fractures".
9. The Secretariat also notes that the expression "articles et appareils" is already used in the French text referring to artificial teeth and dental fittings. (subheadings 9021.2 and 9021.3 of the 2002 version of the HS.)

Possible amendment by Corrigendum

10. The draft amendment, to be carried out in accordance with the Article 16 procedure, is to be examined within the context of the new HS review cycle and will only, in principle, enter into force in 2007. At the 25th Session of the HSC, some delegates pointed out that a problem could arise if the courts of a French-speaking country had to rule on this question before 2007 and suggested that the Secretariat undertake a study to determine whether the procedure for amending the HS by corrigendum could not also be applied in this particular case.
11. Application of the procedure is intended to ensure that the French and English versions of the HS are equally authentic and to avoid delay in correcting minor discrepancies, since this might damage the reputation of the Harmonized System.
12. The Secretariat recalls that at its 71st and 72nd Sessions the Council approved the conclusions of the Harmonized System Committee concerning the implementation of minor

amendments to the Harmonized System by corrigendum. (Doc. 34.830 paragraph 94 – Council Report).

13. The corrigendum procedure applied to legal texts adopted by the Harmonized System Committee and approved by the Council was confined to cases of the types mentioned by the Secretariat in Doc. 34.418 of 10 December 1987 (HSC/1), i.e., cases of :
 - misalignment between the English and French texts
 - improvement of the general presentation of the texts
 - other minor amendments not affecting the substance of the Nomenclature, such as those intended to correct grammatical, spelling, punctuation or printing errors.
14. Furthermore, at its First Session (April 1988) the Committee agreed that implementation of minor amendments following the corrigendum procedure was subject to the following conditions :
 - amendments by corrigendum require the unanimous agreement of the Committee and should be made subject to the approval of the Council, and
 - countries have no legal obligation to implement amendments adopted under the corrigendum procedure until such time as those amendments enter into force by a Recommendation made under the Article 16 procedure.
15. The question is therefore to decide whether the amendment proposed for sub-heading 9021.10 relates to one of the categories, set out in paragraph 13, and particularly the first, i.e., misalignment between the two versions.
16. In this respect, the Secretariat would note that in several other headings of Chapter 90 and in the last part of the text of heading 90.21, the English term “appliances” is translated with the single French word “appareils” (translation confirmed by dictionaries). Hence from a terminology point of view there is no real misalignment between the French and English versions of subheading 9021.10. The problem lies in the fact that the term “appliances” is translated differently in the 4-digit heading and in the corresponding subheading in the structured nomenclature.
17. The Secretariat would also recall that the HS Convention does not contain any clear and explicit legal basis justifying amendments by the corrigendum procedure; this procedure is more of a practical nature and intended to enable the rapid implementation of minor amendments. Moreover, Contracting Parties have no legal obligation to implement such amendments immediately.
18. This being said, the Secretariat feels that the present situation may prevent uniform application of the HS and that to maintain this contentious situation until 2007 would be detrimental. It therefore suggests that the proposed amendment also be implemented by corrigendum – despite the fact that it does not fall in one of the above-mentioned categories (it could be said that it is an omission in the French version) – subject to the unanimous agreement of the Committee and future adoption by the Council.
19. The Secretariat therefore proposes that the Review Sub-Committee examine the draft amendment to be made under the Article 16 procedure, reproduced in the Annex to this

document, and that the question then be submitted to the Committee, with any observations from the Sub-Committee, for decision on the possibility of also implementing this amendment by corrigendum. This question could be decided along with the other proposals for amendment to the HS by corrigendum (Item III.3 on the Agenda of the 26th Session of the HSC).

III. CONCLUSION

20. The Sub-Committee is invited to consider the draft amendment to the text of subheading 9021.10 (2002 version of the HS) in the Annex to this document. If it endorses the amendment the Sub-Committee is also invited to express its views on whether the corrigendum procedure may be applied in this particular case.

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Annexe au Doc. NR0120B1
Annex to

(SCR/22/sept. 2000)
(RSC/22/Sept. 2000)

ANNEXE

AMENDEMENT DU LIBELLE DU N° 9021.10
EN VUE D'ALIGNER LES VERSIONS FRANCAISE ET ANGLAISE
(Point III.B.10 de l'ordre du jour)

ANNEX

AMENDMENT OF THE TEXT OF SUBHEADING 9021.10.
IN ORDER TO ALIGN THE FRENCH AND ENGLISH VERSIONS
(Item III.B.10 on Agenda)

Annexe au doc. NR0120B1
(SCR/22/sept. 2000)

PROCEDURE DE L'ARTICLE 16
AMENDEMENTS DE LA NOMENCLATURE

CHAPITRE 90.

N° 9021.10.

Nouvelle rédaction :

"9021.10 - Articles et appareils d'orthopédie ou pour fractures".

ARTICLE 16 PROCEDURE
AMENDMENTS TO THE NOMENCLATURE

CHAPTER 90.

Subheading 9021.10.

French text only.
